

SUPPORTING STATEMENT

U.S. Department of Commerce

National Oceanic & Atmospheric Administration

Implementation of Vessel Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales

OMB Control No. 0648-0580

Abstract

This is a modification to the existing Paperwork Reduction Act (PRA) supporting statement in place for the 2008 North Atlantic right whale vessel speed regulations. On October 10, 2008, NMFS published a final rule (0648-AS36) implementing seasonal speed restrictions along the east coast of the U.S. to reduce the incidence and severity of vessel collisions with North Atlantic right whales (73 FR 60173). The final rule contained a mandatory collection-of-information requirement subject to the Paperwork Reduction act (PRA), which collects information about safety deviations from the rule in alignment with 50 CFR 224.105(c). In 2019, a modification to the PRA was made, to include additional information collections through a focus group survey and electronic survey, which remain unchanged under this 2022 Proposed Rule (RIN 0648-BI88). The National Marine Fisheries Service is proposing changes to the current PRA (OMB #0648-0580) in anticipation of upcoming regulatory changes to the existing vessel speed regulations. The agency seeks to change information collection protocols pursuant to modification of the safety deviation provision in the existing speed regulations. The rule changes the existing requirements for the collection of information by modifying questions proposed in the safety deviation protocol questionnaire, the number of respondents, anticipated burden hours, or burden costs.

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

On October 10, 2008, the National Marine Fisheries Service (NMFS) published a final rule (0648-AS36) implementing seasonal speed restrictions along the east coast of the U.S. to reduce the incidence and severity of vessel collisions with North Atlantic right whales (73 FR 60173) (hereafter “[speed rule](#)”). The existing speed rule requires most vessels greater than or equal to 65 feet in length to transit at speeds of 10 knots or less in designated Seasonal Management Areas (SMAs). Ten SMAs were designated along the U.S. East Coast to coincide with temporal trends in right whale habitat use. Vessels exempt from the speed rule include vessels owned, operated or contracted by the federal government and vessels engaged in enforcement or search and rescue activities. Under limited circumstances, vessels subject to the rule may deviate from the speed restriction to maintain safe maneuvering speeds. Specifically, 50 CFR 224.105 allows for a safety deviation from the 10-knot seasonal speed limit if poor weather or sea going conditions severely restrict the maneuverability of a vessel. Under such conditions, a vessel master may opt to maintain a speed in excess of the speed restriction, if required for safety, provided a signed entry is made in the vessel logbook detailing the reasons for the deviation, the speed at which the vessel operated, the area, and the time and duration of such deviation.

In addition to the mandatory speed rule, NMFS implemented the voluntary [Dynamic Management Area \(DMA\) and Right Whale Slow Zones programs](#) to provide temporary protection for right whale aggregations that may form outside of designated SMA boundaries. The DMA program was first launched with the speed rule in 2008. A DMA is triggered when a group of three or more right whales are sighted in close proximity. Following the trigger, NMFS establishes a 15-day DMA boundary around the area where the whales were sighted and encourages vessels to avoid the area or transit through at speeds of 10 knots or less. In 2020, NOAA launched the Right Whale Slow Zone program. Right Whale Slow Zones are triggered by both right whale visual sightings (i.e., DMAs) and confirmed North Atlantic right whale detections from acoustic receivers. Under this program, NMFS provides maps and coordinates to vessel operators indicating areas where right whales have been detected (i.e., visually or acoustically). Mariners are encouraged to avoid these voluntary areas or reduce speeds to 10 knots or less while transiting through these areas for 15 days.

In 2013, after removing the “[sunset clause](#)” from the speed rule designed to protect right whales, NMFS committed to publish and seek comment on a report evaluating the conservation value and economic and navigational safety impacts of the rule. This [evaluation was released in 2021](#) and indicates varying levels of compliance across areas (both mandatory SMAs and voluntary DMAs along the U.S. East Coast) and vessel type.

In recent years, vessel compliance data indicated a need to improve cooperation with right whale mandatory and voluntary vessel-speed measures. And while feedback regarding these measures indicated success in reaching some members of vessel communities, prior to 2019, NMFS had not rigorously evaluated the effectiveness of outreach efforts within regulated vessel communities. There was a need for better understanding the human dimension of compliance and cooperation, including what motivates and inhibits compliance and the effectiveness of outreach materials that announce and explain speed rules and voluntary speed measures. To address this, in 2019, NMFS initiated efforts to improve these understandings through investigation of target vessel communities and what efforts may enhance compliance with mandatory rules and cooperation with voluntary speed measures. This included two forms of information collection through an electronic survey and focus group survey and is ongoing and unchanged under the proposed modifications identified below.

Despite NMFS' best efforts, the speed rule evaluation report found that vessel strike mitigation efforts are insufficient to reduce the level of lethal right whale vessel strikes to sustainable levels in the U.S. waters. As a result, NMFS proposes changes to the existing North Atlantic right whale vessel speed regulations. The proposed measures to reduce the risk of serious injury and mortality from vessel strike events in U.S. waters include the following:

- (1) Changes to the spatial boundaries and timing of mandatory SMAs (to be called Seasonal Speed Zones (SSZs) under the Proposed Rule Modifications) to better address areas and times where vessel strike risk is high;
- (2) Inclusion of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel safety deviation provision size class subject to the speed restriction;
- (3) Implementation of a Dynamic Speed Zone (DSZ) framework to implement mandatory speed restrictions when whales are known to be present
- (4) Updates to the speed rule's safety deviation protocol questionnaire

Current regulations under the existing rule lack a mechanism by which the agency can efficiently identify vessels that are employing the safety deviation, including when and where use of the deviation may be common, so these modifications include updates to the rule's safety deviation provision. The existing protocols also lack information and sufficient detail to determine the circumstances surrounding a deviation and to assess situations where a vessel may lack reasonable grounds to employ a safety deviation. NMFS also recognizes that the existing safety deviation language lacks recognition of emergency situations that do not involve a maneuverability issue when a vessel may have immediate cause to exceed the 10-knot speed restriction, especially in regard to the inclusion of vessels less than 65 ft (19.8 m) in length. The proposed inclusion of vessels less than 65 ft (19.8 m) in length within the vessel size class subject to speed regulation presents a new safety issue unique to smaller and lighter boats. During severe weather conditions, vessels less than 65 ft (19.8 m) in length may face maneuverability and associated safety issues. While some vessel operators can easily avoid such conditions, others may need to be out on the water during severe weather events to provide essential maritime services, or as a part of other work obligations. To address these issues, NMFS proposed to retain the current safety deviation provision with several changes:

- 1) Expansion of the safety deviation provision to include emergency situations that present a threat to the health, safety, or life of a person;
- 2) Inclusion of a new provision, applicable only to vessels less than 65 ft (19.8 m) in length, which allows such vessels to transit at speeds greater than 10 knots (5.1 m/s) within areas where a National Weather Service Gale Warning, or other National Weather Service Warning (*e.g.*, Storm Warning, Hurricane Warning) for wind speeds exceeding those that trigger a Gale Warning is in effect. No reporting of these speed deviations would be required; and
- 3) Modification of the safety deviation reporting protocols to eliminate the vessel logbook entry requirement in favor of a new requirement for vessels to submit an online report to NMFS within 48 hours of employing a safety deviation detailing the circumstances and need for the deviation.

The modifications to the speed rule, including the modifications to the safety deviation provisions change the information being collected as subject to the Paperwork Reduction Act (PRA), which collects information about safety deviations from the rule.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information from the safety deviation submission form will not be provided to the general public and can be used for enforcement of the vessel speed rule. The nature of this data collection is inherently ad hoc since mariners only need to make online submissions in unpredictable circumstances when a vessel needs to deviate from the speed limit to maintain safe operations. Given the nature of this collection, it is challenging to specify how frequently a mariner may need to make an online submission, or how frequently it may be used as part of law enforcement investigations. The new safety deviation provision, as described above (applicable only to vessels less than 65 ft), to transit at speeds above 10 knots (5.1 m/s) within areas when a National Weather Service Gale Warning or other Weather Service Warning, does not require a vessel operator to report a speed deviation through the online submission. This provision is intended to eliminate a high volume of safety deviation reporting for maneuverability issues and reduce the burden of mariners in this newly regulated vessel size class, which will primarily consist of recreational/pleasure vessels.

NMFS intends to use this information to monitor safety impacts of the rule and for enforcement purposes. NMFS will review the information and if warranted, may take enforcement action and/or retain the information for later analysis of safety impacts.

The information from survey respondents and focused group participants under the 2019 modifications remains unchanged, and will be collected from operators of pleasure vessels/large yachts and large ocean-going vessels (container ships, tankers, bulk carriers, cruise ships, vehicle carriers and general cargo vessels). Surveys are administered electronically to the pleasure vessels/large yacht community and focus group information is collected in person or virtually during 2.5-hour face-to-face or virtual meetings with the large ocean-going vessels community. NOAA will continue to use this information to improve educational outreach materials pertaining to vessel strike reduction efforts. The information will be shared in aggregated form with participants of the survey and the public. Specifically, NMFS usually shares the results from these types of studies with advisory committees, such as recovery teams and scientific review groups to provide updates on planning with regard to outreach activities that support management efforts. These information collection efforts will remain unchanged under this modification to the proposed rule

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The collection of safety deviation reporting requirements will be done electronically. Modifications of the safety deviation reporting as described in Section 1, will require vessels to submit an online report via a NMFS website within 48 hours of employing a safety deviation detailing the circumstances and need for deviation. This is in place of the logbook submissions that are required under the current speed rule.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2.

Modifications of the safety deviation reporting protocols will eliminate the vessel logbook entry requirement under the existing vessel speed rule requirements in favor of a new requirement, as described in Section 3, to submit an online report. Vessel operators need only make a single entry for each circumstance in which conditions did not allow compliance with restrictions. So, in this regard, there will be no duplication.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection would have an impact on about 2500 small business or small entities. In order to minimize the burden on these small businesses, NMFS is proposing to collect the least amount of information necessary to ensure compliance with the speed restrictions.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

This recordkeeping is essential to the program. Likewise, it is essential to this rulemaking and to the protection of endangered North Atlantic right whales. If a deviation from the speed rule is needed, an electronic submission will be the only means to assess if, when, and how often restrictions were not adhered to due to emergency conditions. Also, it is the only means through which NMFS will be able to assess whether a lack of compliance was legitimate. Without this measure, ship captains may choose not to comply, and the promulgating and regulation enforcing agency would have no recourse. Conducting the recordkeeping less frequently would vitiate the purpose of providing the exemption.

As described below, online submissions for this purpose are expected to take on the order of minutes, in situations and by means that are routinely and periodically made by the ships' crews. The 48-hour time period provided for mariners to make this submission intends to serve as a time buffer for both recreational and commercial mariners to have sufficient access to the NMFS website where this survey must be submitted. A web-based reporting mechanism is assumed to be practical for all mariners that will be impacted under this rule who are responsible for completing and attesting to reports.

This is under the assumption that some of these vessels (i.e., vessels less than 65 ft in length), will make these deviations during day trips, and will have access to a NMFS website within the allotted 48 hours. For larger vessels, or others that will be required to report the safety deviation while at sea, it is under the assumption that they have access to the technology (i.e., access to internet), required to do so.

As noted below, logbook entries for this purpose are expected to take on the order of minutes, in situations and by means that are routinely and periodically made by ships' crews. Therefore, the requirement is not expected to be overly burdensome and conducting it less frequently is not expected to significantly relieve burden to record keepers.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with OMB guidelines.

This information will be submitted on an "as-needed" basis. Respondents will submit the safety deviation survey within 48 hours from when the safety deviation was used, and it is estimated that respondents will utilize this protocol once annually.

8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A proposed rule, RIN 0648-B188, will be published coincident with this submission. Comments on the proposed rule will be considered and, as appropriate, addressed in the final rule.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No such payment or gift will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

Information provided by respondents will not include personal or other confidential or private data. The information will be commercially available, if requested. In addition, once recorded by the respondent, the information will be gathered only by USCG personnel or NOAA OLE officers. These government officers are accustomed to handling information confidentially and their agency policies stipulate information be held in confidence.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No such information will be collected.

12. Provide estimates of the hour burden of the collection of information.

An estimated 10,761 respondents are expected to make the required reporting, one time annually. This is assuming that all vessels greater than 65 ft, in length (5,623 vessels), under Alternative 5 as described in the Regulatory Impact Review, will use the safety deviation protocol one time per year and that half of the vessels less than 65 ft in length (5,138 vessels) will use the safety deviation protocol one time per year (10,761 vessels total). It is estimated that only half of the vessels less than 65 ft in length will use this annually, given the addition of the new provision, which allows vessels less than 65 ft in length to transit at speeds greater than 10 knots within areas where a National Weather Service gale (or other) warning is in effect. During those times, no reporting of a speed deviation is required, so we anticipate the frequency of collection of information to be less for this size class of vessels, as it only applies to vessels less than 65 ft in length.

A sample (fewer than 10) of potential respondents was used to fill out the survey information, and it was determined that it would take approximately 7 minutes (0.12 hrs) per-survey to complete. The draft submission form is attached. The response time is not expected to vary widely.

The annualized cost to respondents for the hour burdens for the collection information was estimated using an average wage rate of \$45.31/hour, which according to the U.S. Bureau of Labor Statistics¹ was the mean hourly wage for 2021 for "Ship and Boat Captain Operators". The details of the total burden are described below:

Information Collection	Type of Respondent (e.g., Occupational Title)	# of Respondents/ year (a)	Annual # of Responses / Respondent (b)	Total # of Annual Responses (c) = (a) x (b)	Burden Hrs / Response (d)	Total Annual Burden Hrs (e) = (c) x (d)	Hourly Wage Rate (for Type of Respondent) (f)	Total Annual Wage Burden Costs (g) = (e) x (f)
Safety Deviation Event Survey	Vessel Operators	10,761	1	10,761	0.12 hr	1,255.45	\$45.31	56,884
Electronic Survey	Motorboat operators	334	1	334	1 hr	334	\$21.35	7,131
Focus Group	Captains, Mates and Pilots of Water Vessels	27	1	27	2.5 hr	67.50	\$ 47.27	3,191
Totals				11,122		1,657		67,206

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

Estimate includes Federal Oversight for contract, participation in survey review and summary review for multiple federal employees at the ZP III and II levels, and the overall contract costs for this multiple year effort.

Cost Descriptions	Grade/Step	Loaded Salary /Cost	% of Effort	Fringe (if Applicable)	Total Cost to Government
Federal Oversight	ZP IV	170000	1.4		2380
Other Federal Positions	ZP III	120000	1		1200
	ZP II	80000	1		800
Contractor Cost					139954

¹ https://www.bls.gov/oes/current/oes_nat.htm

Travel					
Other Costs:					
TOTAL					144,334

15. Explain the reasons for any program changes or adjustments reported in ROCIS.

The changes and adjustments reported in Item 12 reflect an increase in the number of annual respondents, use of a web-based reporting system in lieu of logbook submissions, and modification to the questions asked in the required reporting. There are no modifications to the electronic survey and focus group information collections.

Information Collection	Respondents		Responses		Burden Hours		Reason for change or adjustment
	Current Renewal / Revision	Previous Renewal / Revision	Current Renewal / Revision	Previous Renewal / Revision	Current Renewal / Revision	Previous Renewal / Revision	
Safety Deviation Survey	10,761	3,263	10,761	3,263	1,255	272	Longer response time per survey and more respondents expected due to the increase in number of vessels impacted.
Electronic Survey	334	334	334	334	334	334	No Changes
Focus Group	27	27	27	27	67.5	67.5	No Changes
Total for Collection	11,122	3,624	11,122	3,624	1,657	674	
Difference	7,498		7,498		983		

The increase of 7,748 respondents is due to the increase in vessel operators that would be regulated under the proposed rule modifications, including a higher number of recreational mariners from the additional vessel size class of 35-65 ft vessels. The estimated time to respond increased from an estimated 5 minutes to an estimated 7 minutes, to reflect the additional questions posed, and an overall increase of 983 burden hours annually. The transition from logbook to electronic submission reflects the ease of submitting this information and inclusion of additional vessel classes, including small recreational ships that do not require or use logbooks.

Information Collection	Labor Costs		Miscellaneous Costs		Reason for change or adjustment
	Current	Previous	Current	Previous	
Safety deviation logbook entry	56,884	8,565	0	0	Updated wage information
Electronic Survey	7,131	8,016	0	0	
Focus Group	3,191	2,835	0	0	
Total for Collection	67,206	19,416	0	0	
Difference	47,790		0		

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The information will not be published or distributed externally.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The agency plans to display the expiration date for OMB approval of the information collection on all instruments (forms/surveys/questionnaires).

18. Explain each exception to the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

The agency certifies compliance with [5 CFR 1320.9](#) and the related provisions of [5 CFR 1320.8\(b\)\(3\)](#).